

Senate Bill 141

By: Senator Balfour of the 9th

AS PASSED

AN ACT

To amend Article 2 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to gambling and related offenses, so as to prohibit pyramid promotional schemes; to provide definitions; to provide for penalties and procedures; to provide for other related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to gambling and related offenses, is amended by striking in its entirety Code Section 16-12-38, relating to chain letter clubs, pyramid clubs, and like groups as lotteries, and inserting in lieu thereof the following:

"16-12-38.

(a) As used in this Code section, the term:

(1) 'Compensation' means a payment of any money, thing of value, or financial benefit.

(2) 'Consideration' means the payment of cash or the purchase of goods, services, or intangible property, and does not include the purchase of goods or services furnished at cost to be used in making sales and not for resale, or time and effort spent in pursuit of sales or recruiting activities.

(3) 'Inventory' includes both goods and services, including company produced promotional materials, sales aids, and sales kits that the plan or operation requires independent salespersons to purchase.

(4) 'Inventory loading' means that the plan or operation requires or encourages its independent salespersons to purchase inventory in an amount which unreasonably exceeds that which the salesperson can expect to resell for ultimate consumption or to use or consume in a reasonable time period.

(5) 'Participant' means a person who joins a plan or operation.

(6) 'Person' means an individual, a corporation, a partnership, or any association or unincorporated organization.

(7) 'Promote' means to contrive, prepare, establish, plan, operate, advertise, or to otherwise induce or attempt to induce another person to be a participant.

(8) 'Pyramid promotional scheme' means any plan or operation in which a participant gives consideration for the right to receive compensation that is derived primarily from the recruitment of other persons as participants into the plan or operation rather than from the sale of goods, services, or intangible property to participants or by participants to others.

(b)(1) No person may establish, promote, operate, or participate in any pyramid promotional scheme. A limitation as to the number of persons who may participate or the presence of additional conditions affecting eligibility for the opportunity to receive compensation under the plan does not change the identity of the plan as a pyramid promotional scheme. It is not a defense under this subsection that a person, on giving consideration, obtains goods, services, or intangible property in addition to the right to receive compensation.

(2) Nothing in this Code section may be construed to prohibit a plan or operation, or to define a plan or operation as a pyramid promotional scheme, based on the fact that participants in the plan or operation give consideration in return for the right to receive compensation based upon purchases of goods, services, or intangible property by participants for personal use, consumption, or resale so long as the plan or operation does not promote or induce inventory loading and complies with the cancellation requirements of subsection (d) of Code Section 10-1-415.

(3) Any person who participates in a pyramid promotional scheme shall be guilty of a misdemeanor of a high and aggravated nature. Any person who establishes, promotes, or operates a pyramid promotional scheme shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years.

(4) Nothing in this Code section shall be construed so as to include a 'multilevel distribution company,' as defined in paragraph (6) of Code Section 10-1-410, which is operating in compliance with Part 3 of Article 15 of Chapter 1 of Title10."

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.